

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

WALLACE WHITELY, #324812 §
§
§
V. § CIVIL ACTION NO. G-03-555
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§
NICK RUSSO, ET AL. §

ORDER OF DISMISSAL

Before the Court for its Order of Acceptance is a Report and Recommendation of the United States Magistrate Judge, entered on July 17, 2006, which recommends that Defendants' Motion for Summary Judgment be granted and the instant cause be dismissed with prejudice. The Report and Recommendation specifically provided: "Plaintiff shall have until August 2, 2006, in which to have written objections physically on file in the Office of the Clerk." To date, no objections have been filed.

Upon appropriate review pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1)(C), the Court is satisfied that there is no clear error on the face of the record in these proceedings. Accordingly, the Report and Recommendation is **ACCEPTED** in its entirety and incorporated herein by reference. It is **ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED** and this cause is **DISMISSED** with prejudice as frivolous.

This Order does not release Plaintiff or the Texas Department of Criminal Justice, Institutions Division from the obligation to pay the filing fee previously imposed. Plaintiff is advised that if he appeals this dismissal, he will be required to pay the appeal fee of \$455.00 pursuant to the Prison Litigation Reform Act, and he must submit a 6-month certificate of his inmate trust account when he files his notice of appeal.

A certified copy of this Order shall be mailed to: **TDCJ-Office of the General Counsel**, P.O. Box 13084, Austin, Texas, 78711; and, to **TDCJ Local Funds Division**, P.O. Box 629, Huntsville, TX 77342-0629.

DONE at Galveston, Texas, this the 21st day of August, 2006.



Samuel B. Kent
United States District Judge